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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:
PG&E CORPORATION
- and -
PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**STATEMENT OF CERTAIN PG&E
SHAREHOLDERS IN SUPPORT OF
DEBTORS' MOTION FOR THE
ESTABLISHMENT OF WILDFIRE
CLAIMS ESTIMATION PROCEDURES**

Date: August 14, 2019
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Docket No. 3091

1 Certain owners of common stock of PG&E Corporation (the “PG&E Shareholders”)¹
2 hereby file this statement of support for the *Debtors’ Motion Pursuant To 11 U.S.C. §§ 105(a)*
3 *And 502(c) For The Establishment Of Wildfire Claims Estimation Procedures* [ECF 3091] (the
4 “Motion”).

5 **STATEMENT OF SUPPORT**

6 Out of all the discord and divergent views in this case, one clear consensus emerges: the
7 unliquidated wildfire claims against PG&E – especially those relating to the Tubbs fire – must be
8 quantified as rapidly and comprehensively as possible.

9 PG&E says that “[t]he fundamental issue that needs to be resolved in order for the Debtors
10 to emerge from Chapter 11 is the value of the tens of thousands of unadjudicated, unliquidated
11 Wildfire Claims to be addressed in a Chapter 11 plan.” Motion at 1. The Tort Claimants
12 Committee (the “TCC”) agrees that “the parties cannot adequately capitalize a Trust, negotiate a
13 consensual plan, or litigate a contested plan confirmation without resolving PG&E’s liability for
14 the Tubbs Fire Claims.” [ECF 2855 at 7] (“TCC Motion”). The Ad Hoc Committee of
15 Subrogation Claim Holders (the “Subrogation Group”) asserts that a determination of liability for
16 the Tubbs fire “is a gating issue for any consensual resolution of the wildfire claims against
17 PG&E” and, hence, a necessary predicate for “mov[ing] these bankruptcy cases toward a
18 confirmable plan of reorganization expeditiously and efficiently.” [ECF 2863-1 at 1]
19 (“Subrogation Motion”).

20 From that point of consensus, however, the parties have suggested two diametrically
21 opposite paths. By the Motion, PG&E proposes a comprehensive three-stage process for
22 estimating *all* of its wildfire liabilities in a timely manner, thereby enabling stakeholders to

23
24 ¹ The PG&E Shareholders are the entities identified on Exhibit A to the *Second Amended*
25 *Verified Statement Of Jones Day Pursuant To Federal Rule Of Bankruptcy Procedure 2019*
26 [ECF 3158], excluding Abrams Capital Management, LP, on behalf of certain funds and
27 accounts, and Knighthead Capital Management, LLC, on behalf of certain funds and
28 accounts. The PG&E Shareholders are acting in their individual capacities but authorized the
filing of this single submission for the purpose of administrative efficiency. Each of the
PG&E Shareholders is expressing its independent views, and counsel does not have the actual
or apparent authority to obligate any one entity to act in concert with any other entity with
respect to PG&E equity securities. The PG&E Shareholders have not agreed to act in concert
with respect to their respective interests in PG&E equity securities.

1 negotiate a plan and resolve these cases by the critical June 30, 2020 deadline. By their
2 companion motions for relief from stay, in contrast, the TCC and Subrogation Group propose to
3 litigate in state court a handful of the thousands of claims arising from the Tubbs fire, leaving the
4 balance of Tubbs claims and all claims relating to other fires to be addressed at some unspecified
5 future date.

6 The Court has recognized that the issues presented by these pending requests are
7 “inexorably linked.” [ECF 3121 at 2]. Simply put, the parties cannot proceed down both
8 suggested paths simultaneously. For wildfire claims, there must be centralized estimation or
9 piecemeal litigation; there cannot be both. The Motion conclusively demonstrates that
10 estimation, not litigation, is the legal and practical answer on the facts now before the Court. The
11 PG&E Shareholders therefore strongly support the Motion and ask the Court to grant the relief
12 requested.

13 First and foremost, Congress has spoken on this precise issue. Section 502(c) of the
14 Bankruptcy Code commands that the Court “shall” estimate any and all unliquidated claims, “the
15 fixing or liquidation of which . . . would unduly delay the administration of the case.” 11 U.S.C.
16 § 502(c); *see, e.g., A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1012 (4th Cir. 1986) (estimation “is
17 a mandatory obligation of the bankruptcy court” when claims liquidation would unduly delay the
18 case). No one seriously suggests that PG&E could litigate all of the tens of thousands of wildfire
19 claims without unduly delaying administration of these cases. Such litigation literally would take
20 years to conclude, during which time PG&E’s creditors would remain unpaid and PG&E’s ability
21 to participate in the newly created wildfire insurance fund would vanish. Motion at 3-4
22 (“Litigating claims individually would take years, impede the successful reorganization of the
23 Debtors, delay distributions to wildfire victims and all other creditors and preclude PG&E from
24 participating in the wildfire fund.”). The Court therefore has an “affirmative duty” to proceed
25 with estimation. 4 COLLIER ON BANKRUPTCY ¶ 502.04[2] (16th ed. 2019) (“The language of
26 section 502(c) is mandatory and places upon the court an affirmative duty to estimate
27 unliquidated claims when appropriate.”).

1 Second, and independently, estimation clearly is the most practical and logical way to
2 proceed. Piecemeal litigation in state court would put the brakes on all forward progress in these
3 cases as stakeholders await trials of indeterminate length to be conducted by one or more state
4 courts with no concern for this reorganization or PG&E's prospects for rehabilitation. Litigation
5 of individual wildfire claims almost certainly would prevent PG&E from resolving these cases by
6 the middle of next year, creating immense risk and potentially destroying value.

7 Moreover, the California Legislature has required that, if not settled, all of PG&E's
8 wildfire liabilities be estimated or allowed *by this Court* by June 30, 2020, as a condition to
9 accessing the statewide wildfire insurance fund. CAL. GOV'T CODE § 3292(b)(1)(B) (as a
10 condition to accessing the fund, by not later than June 30, 2020, "[t]he bankruptcy court or a court
11 of competent jurisdiction, in the insolvency proceeding, has determined that the resolution of the
12 insolvency proceeding provides funding or establishes reserves for, provides for assumption of, or
13 otherwise provides for satisfying any prepetition wildfire claims asserted against the electrical
14 corporation in the insolvency proceeding in the amounts agreed upon in any pre-insolvency
15 proceeding settlement agreements or any post-insolvency settlement agreements, *authorized by*
16 *the court through an estimation process or otherwise allowed by the court*") (emphasis added).
17 By definition, piecemeal litigation of Tubbs claims in state court would preclude PG&E from
18 meeting that condition.

19 The TCC's contrary assertion that, if relief from stay is granted, no litigation will take
20 place and PG&E will "settle[] all fire claims before trial," TCC Motion at 21, is at once cynical,
21 speculative, and illogical. PG&E's alleged "history" of settling fire cases involves litigation over
22 a single fire (Butte) with different facts, different claimants, and different claims. [ECF 2845
23 ¶ 12]. Most notably, unlike the Butte fire, the Tubbs fire was determined by the official state
24 investigators at the California Department of Forestry and Fire Protection (also known as "Cal
25 Fire") not to have been caused by PG&E. Motion at 6. There is every reason to expect that
26 PG&E will contest Tubbs fire claims vigorously, as it has a fiduciary duty to defend against
27 claims for which it has no liability. We cannot imagine how any party in interest or the CPUC or
28

1 the State of California could see this differently. It is in no one's interest for PG&E to pay any
2 claims arising from fires started by the conduct of others.

3 In addition, the TCC similarly cannot explain how a pending trial relating to one fire
4 (Tubbs) somehow would cause PG&E to settle all of the claims it now faces relating to two dozen
5 different fires that occurred at different times over several years across hundreds of miles of
6 PG&E's service territory. At a minimum, the TCC's flimsy speculation of settlement is no basis
7 for taking these cases out of the control of the Court and placing them in the hands of one or more
8 state trial courts.

9 In any event, estimation will accomplish exactly what the TCC and the Subrogation
10 Group say they want to accomplish – judicial resolution of the threshold “gating” issue of
11 PG&E's liability in respect of the Tubbs fire. *See* TCC Motion at 19 (“The Tubbs Fire is a gating
12 issue in this case. . . . A determination of liability would, ‘in one fell swoop,’ either dispose of
13 claims or have a favorable impact on settlement prospects.”); Subrogation Motion at 1 (The goal
14 of moving toward confirmation “can best be achieved by answering the question that most
15 separates the key parties negotiating a plan: Is PG&E liable for the devastating 2017 Tubbs
16 Fire?”). PG&E specifically proposes – as the second phase of a three-phase estimation protocol –
17 that the Court “estimate the likelihood of success of Wildfire Claims arising out of the Tubbs
18 Fire.” Motion, Ex. A ¶ 4. The determination of that critical issue is and should remain the
19 prerogative of the Court.

20 CONCLUSION

21 In its forthcoming brief addressing the Court's questions regarding estimation and
22 responding to whatever objections will be filed in respect of the Motion, PG&E will establish that
23 the Court (possibly with the assistance of the District Court) has the jurisdiction, authority, and
24 responsibility to estimate all of the unliquidated wildfire claims asserted in these cases, including
25 personal injury claims, for purposes of confirmation, feasibility, and the creation of a capped trust
26 from which distributions may be made to wildfire victims as and when their claims are settled or
27 liquidated. The PG&E Shareholders join PG&E's arguments in this regard and, in the interests of
28 judicial economy, do not repeat them here. The PG&E Shareholders urge the Court to grant the

1 Motion in order to break the logjam in these cases and maximize the prospects of a successful
2 reorganization before June 30, 2020.

3 Dated: August 7, 2019

JONES DAY

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By: /s/ James O. Johnston

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James O. Johnston

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Attorneys for PG&E Shareholders

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